

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 9 June 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Stebner Realty, Inc., NWS-2007-1706-NO
Lincoln Creek and Wetlands A, B, & C

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WA County/parish/borough: Whatcom City: Bellingham
Center coordinates of site (lat/long in degree decimal format): Lat: 48° 44' 29.47", Long. 122° 27' 54.61"
Universal Transverse Mercator: Zone 10 N5398860.44 E 539320.86

Name of nearest waterbody: Lincoln Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Whatcom Creek

Name of watershed or Hydrologic Unit Code (HUC): 17110002, Strait of Georgia

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: 18 March 2008

☒ Field Determination. Date(s): 2 November 2007

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☒ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs (**Lincoln Creek**)
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs (**Wetlands A and B**)
- ☒ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs (**Wetland C**)
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 2,130 linear feet: width (ft) and/or acres.

Wetlands: 10.24 acres

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual and established by OHWM

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. **If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.**

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Strait of Georgia, HUC 17110002, 955 **square miles**

Drainage area: 804 **acres**

Average annual rainfall: 35 inches

Average annual snowfall: 16 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☒ Tributary flows through **1** tributary before entering TNW.

Project waters are **2-5** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **1-2** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: No.

Identify flow route to TNW⁵: Lincoln Creek flows 1.1 miles to Whatcom Creek, which flows 1.5 miles to Bellingham Bay.

Tributary stream order, if known: 1st.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural

☐ Artificial (man-made). Explain: .

☒ Manipulated (man-altered). Explain: Creek flows through culverts upstream and downstream of subject site.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary properties with respect to top of bank (estimate):

Average width: 4 feet

Average depth: 2 feet

Average side slopes: **3:1**.

Primary tributary substrate composition (check all that apply):

- | | | |
|---|--|-----------------------------------|
| <input checked="" type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input checked="" type="checkbox"/> Cobbles | <input checked="" type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> Other. Explain: . | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Mostly stable; some spots with naturally eroding banks.

Presence of run/riffle/pool complexes. Explain: Substrate sorting provides riffle/pool complexes in northern ¾ of stream on site.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): 3 %

(c) **Flow:**

Tributary provides for: **Perennial**

Estimate average number of flow events in review area/year: continuous

Describe flow regime: Year round flow.

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Bed and banks | |
| <input checked="" type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input checked="" type="checkbox"/> destruction of terrestrial vegetation |
| <input checked="" type="checkbox"/> shelving | <input checked="" type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away | <input checked="" type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input checked="" type="checkbox"/> water staining | <input checked="" type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: . | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by: | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water is clear and water quality is good. Tributary conveys water from natural sources and runoff from commercial/residential lands and roads. Lower watershed is extensively developed; upper watershed is forested..

Identify specific pollutants, if known: Fecal coliform, petrochemicals from road runoff.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☒ Riparian corridor. Characteristics (type, average width): Corridor in northern ¾ of site is limited by steep slopes; cover is primarily tree and shrub. Channel widens out in relatively flat area on southern ¼ of site; cover is shrub and herbaceous species.
- ☒ Wetland fringe. Characteristics: Scattered wetlands on benches abutting stream in northern ¾ of site. Wide area of abutting wetlands along stream on southern ¼ of site

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☒ Fish/spawn areas. Explain findings: Subject reach and upstream areas have riffle/pool complexes that could be used by spawning salmonids if downstream barriers are removed. Whatcom Creek (1.1 mile downstream) contains Essential Fisheries Habitat (Magnuson-Stevens Fishery Conservation and Management Act designation) for coho salmon

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Diversity of aquatic species in Tributary rated low to moderate by WA Department of Fish & Wildlife..

2. Characteristics of wetlands adjacent to a TNW that flows directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: Wetland C – 0.06 acres; acres

Wetland type. Explain: Wetland C – PFO slope.

Wetland quality. Explain: Wetland C – Category III.

Per Washington State wetland rating System (based on a scale of I to IV, I being the highest functioning)

Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: .

Surface flow is: **Overland sheetflow**

Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☒ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: .

☒ Ecological connection. Explain: Per the Environmental Protection Agency - Wetland C is approximately 60 feet from the creek. Based on the 2-foot contours depicted on the JD plan view, the lower end of Wetland C is approximately eight feet above the creek and four feet above Wetland A, which follows along the stream. Riparian scrub and forest separate wetland C from the creek. Wetland C likely receives overland flow from the highway and hillside above and releases it via overland or shallow subsurface flow to Lincoln Creek. Natural Resources Conservation Service (NRCS) mapping depicts the soil beneath the area including Wetland C as Chuckanut (gravely loam)-Urban land complex, which NRCS characterizes as having moderately high to high transmissivity in its most restrictive layer. Wetland C likely occupies an unmapped inclusion of hydric soil—probably Labounty silt loam—which the NRCS describes as being ponded up to one foot in depth between November and May, unless artificially drained. Biologically, the landscape position indicates that Wetland C may contribute organic and other biological material to wetland A and Lincoln Creek. .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **1-2** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: No standing or flowing water visible at time of site visit. Wetland receives water from vegetated areas upslope. Water quality generally good. Lower watershed is extensively developed; upper watershed is forested.

Identify specific pollutants, if known: None identified.

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width): .

☒ Vegetation type/percent cover. Explain: scrub-shrub 15%, forested 85%..

☐ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **15-20**

Approximately 19 acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

For Wetlands identified by NWS-2006-1101-NO

<u>Wetland</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
A	Y	0.12
B	N	0.01

For Wetlands identified by NWS-2007-1706-NO

<u>Wetland</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
A	Y	10.07
B	Y	0.11
C	N	0.06

For Wetlands identified by NWS-2008-23-NO

<u>Wetland</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
A	Y	0.51
B/C/D	N	0.76
E/EE	Y	0.81
F/FF	Y	3.83
G/GG	N	0.96
H/I/II/L	N	0.34
J/JJ/M	N	0.28
N/NN/NNN/NNNN	N	0.04
O/OO/OOO	N	0.13

Per the National Wetland Inventory and the WA State Department of Ecology Wetland Inventory, 2 additional wetland areas are identified:

<u>Wetland</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
1	N	0.50 (approximate)
2	N	0.20 (approximate)

Summarize overall biological, chemical and physical functions being performed: See section C.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

Subject wetlands have a significant nexus to downstream TNW.

Subject reach includes the entire length of Lincoln Creek from its headwaters to the confluence with Whatcom Creek. Watershed has been extensively developed for commercial and residential uses. Local planning information indicates additional development in the near future. Essential Fish Habitat for Pacific salmon (designated under the Magnuson-Stevens Fishery Conservation and Management Act) extends from the nearest TNW (Bellingham Bay) upstream past the confluence with Whatcom Creek and into the lower ½ mile of Lincoln Creek. Fish species listed under the Endangered Species Act utilize the waters of the Bellingham Bay; designated critical habitat for chinook salmon and bull trout exists in Bellingham Bay.

Overall wetland functions are moderate wildlife habitat and habitat diversity, moderate enhanced food web support, moderate floodwater storage/attenuation, and moderate to high sediment input reduction and toxin removal.

The tributary in combination with its adjacent wetlands provide habitat and lifecycle support functions for fish. The wetlands create and transfer organic carbon which supports the downstream food web of the TNW. Wetlands improve downstream water quality in TNW through sediment and toxin interception. The lengthy vegetated tributary with wetland complexes have the capacity to capture pollutants (residential herbicides/pesticides, road runoff, and sediments) to reduce the amount of pollutants, sediments and flood waters from reaching the TNW. Wetlands attenuates downstream flooding by reducing peak flow in the watershed during major storm events and attenuates erosion by detaining high flows during storms and reduce the duration of erosive flows, thus decreasing downstream erosion in streams.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- ☐ TNWs: linear feet width (ft), Or, acres.
☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide rationale indicating that tributary flows seasonally: **Lincoln Creek is identified by USGS and the City of Bellingham as a perennial stream, which flows into Whatcom Creek, a tributary of Bellingham Bay, a tidal waterbody used for interstate and foreign commerce.**
☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: 2,130 linear feet width (ft).
☐ Other non-wetland waters: acres.
 Identify type(s) of waters: .

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
 Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. **The document titled "Lincoln Street parcel, Wetland , Fish, and wildlife Reconnaissance and Delineation," dated 5 August 2005 and the surveyed site drawings identify the boundary of the wetlands A and B as extending to the edge of the OHW of Lincoln Creek with no intervening uplands, berms, etc..**

⁸See Footnote # 3.

- ☐ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: **10.11** acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- ☒ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. **Data supporting this conclusion is provided at Section III.C.**

Provide acreage estimates for jurisdictional wetlands in the review area: **0.06** acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: .
☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Wetland delineation report dated May 2006.
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: Bellingham South Quad
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☒ State/Local wetland inventory map(s): WA State Department of Ecology, 2001
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): WA State Department of Ecology, 2005; City of Bellingham, 2004.
or ☐ Other (Name & Date): .
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Site Visit: 2 November 2007

10:00 – 13:45

Weather – Clear, sunny, cold

Randel Perry (Corps)

Jason Kapchinske (consultant)

Site Description: The 22-acre subject site is located in the City of Bellingham and is trapezoidal in shape, ranging primarily north-south. Topography slopes from northwest and eastern borders to a centrally located ravine that contains Lincoln Creek and a low area along the southern boundary. The site is bounded by commercial properties to the north, the Maple Street right-of-way to the south, Lincoln Street to the east, and Interstate 5 to the west. Drainage through the site trends from southeast to the north. The immediate vicinity around the site is extensively developed for residential and commercial uses. The site is comprised primarily of forested areas adjacent to the creek trending to open grassy areas with shrub communities on the northwest and eastern sides. Property is currently undeveloped and extensively used for transient camps but was part of a 9-hole golf course in the 1930s through 1960s prior to development of commercial properties to the north in the mid-1960s and early 1970s. Lincoln Creek was dammed at the north end of the site in the mid-60s, but now flows north through culverts under the developed properties and into Whatcom Creek. Lincoln Creek is identified as a perennial stream by the USGS.

Delineation: A wetland delineation was conducted by ATSI in May and June of 2005 and verified by The Jay Group in the spring of 2007. Three wetlands (A, B, and C) and 1 stream (Lincoln Creek) were identified by the consultants.

Soils: Mapped soils are – Chuckanut-Urban Land complex (non-hydric)

Urban Land – Whatcom LaBounty complex (non-hydric w/ hydric LaBounty inclusions)

Observed soil colors are:

Wetlands – 10YR 2/1 silt loam with 2.5YR 4/4 mottles.

Uplands – 10YR 3/2 silt loam (no mottles).

Vegetation:

PEM

Wetlands -

Juncus effusus (soft rush, FACW)

Phalaris arundinaceae (reed canary grass, FACW)

Agrostis spp. (bentgrass, FAC)

Ranunculus repens (creeping buttercup, FACW)

Holcus lanatus (velvet grass, FAC)
Scirpus microcarpos (small-fruited bulrush, OBL)
Equisetum telmateiae (giant horsetail, FACW)
Lysitichiton americanus (skunk cabbage, OBL)

PSS/PFO

Wetlands - *Lonicera involucrata* (black twinberry, FAC+)
Alnus rubra (red alder, FAC)
Populus balsamifera (black cottonwood, FAC)
Rubus spectabilis (salmonberry, FAC)
Salix lucida (Pacific willow, FACW)
Salix sitchensis (Sitka willow, FACW)
Spirea douglasii (Douglas spirea, FACW)
Cornus sericea (red-osier dogwood, FACW)
Phalaris arundinaceae (reed canary grass, FACW)

Uplands - *Rubus discolor* (Himalayan blackberry, FACU)
Forest *Populus balsamifera* (black cottonwood, FAC)
Alnus rubra (red alder, FAC)
Acer macrophyllum (big leaf maple, FACU)
Rubus spectabilis (salmonberry, FAC)
Oemleria cerasiformis (osoberry, FACU)
Symphoricarpos albus (snowberry, FACU)
Polystichum munitum (sword fern, FACU)
Rubus ursinus (trailing blackberry)

Upland - *Cytisus scoparius* (Scot's broom, UPL)
Shrub/ *Sambucus racemosa* (red elderberry, FACU)
Meadow *Cirsium arvense* (Canadian thistle, FACU)
Agrostis gigantea (bentgrass, FAC)
Cerastium arvense (common chickweed, FACU)
Festuca rubra (red fescue, FAC)
Phalaris arundinaceae (reed canary grass, FACW)

Wetland acreage identified: 10.20

Wetland acreage to be filled: Unknown

Observations/Discussion: A site visit was conducted by Corps staff (R. Perry) on 2 November 2007. Lincoln Creek has a persistent year round flow with a clearly defined OHW (average width of 3 feet), bed, and bank. Corps personnel walked around the perimeter of all identified wetlands. Observed wetland boundaries are defined by topography and upland soils, especially in the northern ¾ of the site. The boundaries for wetlands A, B, and C as depicted on the drawings found in the report dated August 5, 2005 appear to be accurate. Wetlands A and B are abutting Lincoln Creek. Wetland A exists on a continuous bench next to the creek channel and spreads out into a large inundated area at the south end of the site. Wetland B is continuous from the large portion perched on the slope to the west of the creek, down to the creek channel. This wetland appears to be the remnant of a tributary channel that came from the hillside down into Lincoln Creek.

Wetland C has developed on a flat area on the slope in the southwest part of the site. The area appears to have been altered by development in the past (building site?) resulting in a depression in the terrain. The wetland is dominated by a stand of alder and hardhack. Wetland C is surrounded by upland soils and there is no discreet surface connection between the wetland and Lincoln Creek. Based on the proximity to Lincoln Creek (60 feet) and position upslope from the creek channel, there is a possibility of sheetflow from Wetland C to the Lincoln Creek channel during significant rain events.

In considering development of the site, the Corps recommended avoidance of the creek, riparian buffers, and abutting wetlands and the southern portion of the site containing the broad area of wetland A. Mitigation opportunities, creation and rehabilitation, exist in the latter area.

Jurisdictional determination: Wetlands labeled A and B abut Lincoln Creek, which drains into Whatcom Creek, a tributary of Bellingham Bay, a tidal waterbody used for interstate and foreign commerce. Wetland C is surrounded by uplands with no apparent surface water connection to other waters of the U. S. Wetland C was originally determined to be isolated, however, consultation between the Corps and the U. S. Environmental Protection Agency has determined that wetland C is adjacent to Lincoln Creek, which drains into Whatcom Creek, a tributary of Bellingham Bay, a tidal waterbody used for interstate and foreign commerce. Lincoln Creek and Wetlands A, B, and C are jurisdictional.